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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/786,469

02/26/2004

Jorn Kluge

0075/013001

9315

22893

7590

03/13/2009

SMITH PATENT OFFICE

1901 PENNSYLVANIA AVENUE N W

SUITE 901

WASHINGTON, DC 20006

EXAMINER

SHAHRESTANI, NASIR

ART UNIT

PAPER NUMBER

3737

MAIL DATE

DELIVERY MODE

03/13/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/786,469	<b>Applicant(s)</b> KLUGE, JORN	
	<b>Examiner</b> NASIR SHAHRESTANI	<b>Art Unit</b> 3737	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 August 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 19-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments with respect to claims 19-26 and 30-34 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19-25, 27-29, and 30-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Felton et al. (U.S. 6,207,874) in view of Yano et al. (U.S. 5,684,359).

Felton et al. teach the application of tattoos to the skin (col. 2 line 20 & col. Lines 57-67), and the incorporation of computer image processing to match skin tone (col. 4 lines 47-56). Furthermore, Felton et al. teach the use of photographs being a RGB image and wherein white light (camera flash) is utilized. Felton et al. further teach the recording of skin tone for tattoo construction.

Felton et al. do not specifically teach wherein skin test values representing chromaticity are obtained.

Yano et al. teach the use of a discharge lamp and an illumination instrument for general illumination which is able to reproduce preferable skin color by an illumination light in relation to skin test color, and calculation an index thereof (see abstract).

Yano et al. further teach providing a description by which a preferred chromaticity of skin color is provided (col. 2 lines 32-35).

It would have been obvious to one of ordinary skill in the art at the time of invention to have modified Felton et al. and to have included methods of differentiation skin chromaticity in order to provide an improved and relatively realistic template of skin when providing a tattoo.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Felton et al. (U.S. 6,207,874) in view of Yano et al. (U.S. 5,684,359) as applied to claim 23 above, and further in view of Pruche (U.S. 2003/0065523).

Felton et al. in view of Yano et al. teach all the features of claims 19-25 as described, but do not teach pH tracking.

Pruche teaches skin tone and pH monitoring (par. 0038) for make-up tracking (par. 0030) in human subjects and the use of a camera (par. 0040).

It would have been obvious to one of ordinary skill in the art at the time of invention to have modified Felton et al. in view of Yano et al. and to have included more specific gathering as taught by Pruche, such as providing for pH values.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NASIR SHAHRESTANI whose telephone number is (571)270-1031. The examiner can normally be reached on Mon.-Thurs: 7:30-5:00, 2nd Friday: 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3737

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRIAN CASLER/  
Supervisory Patent Examiner, Art Unit  
3737

/Nasir Shahrestani/  
Examiner, Art Unit 3737